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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,640	11/26/2001	Robert Kuhlmann	209833US0	4060

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1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

JOHNSON, EDWARD M

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,640

Applicant(s)

KUHLMANN ET AL.

Examiner

Edward M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-17 is/are rejected.
- 7) ☒ Claim(s) 5-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10-13 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-13 and 17, "the nutritive feed components", "the vitamin components", "the components", and "the ingredients" all lack antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nauroth et al. US 4,495,167.

Regarding claim 1, Nauroth '167 discloses precipitated silica having a surface area of 400-600 m²/g, pH of 6-7, DBP number of 340-380%, density of 180-220 g/l, and ALPINE sieve residue >63 microns of 25-60 (see abstract).

Regarding claims 2-4, Nauroth '167 discloses precipitated silica having a surface area of 400-600 m²/g, pH of 6-7, DBP number of 340-380%, density of 180-220 or 75-120 g/l, and ALPINE sieve residue >63 microns of 25-60 or 0.1 (see abstract).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 10-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nauroth '167.

Regarding claims 10-17, Nauroth '167 discloses precipitated silica comprising a surface area of 400-600 m²/g, pH of 6-7, DBP

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number of 340-380%, density of 180-220 or 75-120 g/l, and ALPINE sieve residue >63 microns of 25-60 or 0.1 (see abstract).

In the event any differences can be shown for the product of the product-by-process claims 10-17, as opposed to the product/process taught by Nauroth '167, such differences would have been obvious to one of ordinary skill in the art at the time the invention was made as a routine modification of the product in the absence of a showing of unexpected results; see also *In re Thorpe*, 227 USPQ 964 (Fed.Cir. 1985).

Allowable Subject Matter

8. Claims 5-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: It would not have been obvious to one of ordinary skill in the art at the time the invention was made to stir the 35-45 degree Celsius water at medium to shear and within 100 minutes add the water and sulfuric acid together, interrupting for 60-120 minutes in the process of claim 5, which is specifically for making the product of the instant claim 1.

Conclusion

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nauroth et al. US 4,289,681 discloses precipitated silica having specific properties (see abstract, Examples); Muller et al. US 4,664,907 discloses a dental care composition comprising precipitated silica having specific properties (see abstract, Examples); Siray et al. US 6,395,247 discloses precipitated silica having specific properties (see abstract, Examples).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward M. Johnson whose telephone number is 703-305-0216. The examiner can normally be reached on M-F 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on 703-308-3837. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

EMJ


STANLEY S. SILVERMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700